Prithipal Singh v Datuk Bandar, Kuala Lumpur (Golden Arches Restaurant Sdn Bhd, Intervener)

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-132-1993
ABDUL HAMID OMAR LP, EUSOFF CHIN AND PEH SWEE CHIN SCJJ
13 SEPTEMBER 1993

Landlord and Tenant *— Recovery of possession — Order made by Datuk Bandar under s 19 of the Control of Rent Act 1966 — Application for certiorari to quash order — Whether decision of Datuk Bandar was amenable to certiorari — Control of Rent Act 1966 s 19*

Administrative Law *— Rights and liabilities of public servant — Delegation of power by Datuk Bandar — Whether delegation was valid — Federal Capital Act 1960 s 4(6) & (7)*

Administrative Law *— Remedies — Certiorari — Whether decision of Datuk Bandar under s 19 of the Control of Rent Act 1966 was amenable to certiorari — Control of Rent Act 1966 s 19*

Statutory Interpretation *— Construction of statute — Significance of comma after the words 'the Secretary General of the Ministry of the Federal Territory,' in s 4(7) of the Federal Capital Act 1960 — Federal Capital Act 1960 s 4(7)*

The intervener, as the owner of premises which was subject to the Control of Rent Act 1966 ('the Act'), had applied under s 19 of the Act for recovery of possession of the premises for development purposes. The appellant was one of the subtenants of the premises. The Datuk Bandar of Kuala Lumpur had under s 4(6) of the Federal Capital Act 1960, delegated his functions to the director and also the deputy director ('Mr Wan') of the valuation department of the Dewan Bandaraya, Kuala Lumpur. Counsel for the appellant did not object to the application but asked for a time of more than six months to vacate the premises. Mr Wan said that he would initially give six months as provided under s 19(4)(b) of the Act but if more time was required, it had to be applied for before the expiry of the six months. Mr Wan then ordered the tenants to vacate the premises by 13 November 1991 and the owner to pay RM103,567.68 as compensation to the tenant and subtenants. The appellant then filed an application for an order for certiorari to quash the order of the Datuk Bandar. The High Court judge dismissed the application (see [1993] 2 MLJ 390) and the appellant has appealed.

Held, dismissing the appeal:

(1) Under s 4(7) of the Federal Capital Act 1960, whenever the office of the Datuk Bandar is vacant, the Secretary General of the Ministry of the Federal Territory shall automatically carry out the functions and exercise the powers of the Datuk Bandar. Where, however, the office of the Datuk Bandar and that of the Secretary

General are vacant, the Minister of the Federal Territory may authorize in writing any public officer to carry out the functions and exercise the powers of the Datuk Bandar. Therefore, in this case, any decision of Mr Wan in the exercise of the delegated power was the decision of the Datuk Bandar.

(2) The Federal Capital Act 1960 does not require that the instrument of delegation by the Datuk Bandar must be in any special form and in this case, the delegation of the powers to the director and deputy director of the valuation department was effective, as it was expressed in clear language.

(3) Although s 19(2) of the Act provides that any order by the Datuk Bandar under the section would be final and conclusive and should not be questioned in any court, this did not preclude the court from entertaining an application for an order of certiorari.

(4) Here, Mr Wan had the jurisdiction to determine the application under s 19 of the Act and in doing so, he had also complied with the provisions of that section. He had given the appellant the opportunity to make representations as to why the order under s 19 should not be made. The notes of the inquiry showed that the appellant was not in fact objecting to the application but only requested for a time longer than six months to vacate the premises, to which request he was told to make a separate application to the Datuk Bandar. The judge in the High Court was therefore right in dismissing the application for certiorari.

Per curiam:

Normally, to determine the intent of the law, the court would look at a sentence from a purely grammatical point of view so that in construing a statute, the court will disregard a punctuation or will re-punctuate it if that be necessary, in order to arrive at the true purpose and natural meaning of the words employed.

[Bahasa Malaysia summary

Pencelah, sebagai tuanpunya premis yang tertakluk kepada Akta Kawalan Sewa 1966 ('Akta itu'), telah membuat permohonan di bawah s 19 Akta itu untuk mendapat kembali milikan premis itu bagi tujuan pembangunan. Perayu merupakan salah seorang daripada penyewa kecil premis itu. Datuk Bandar Kuala Lumpur telah mewakilkan fungsinya mengikut s 4(6) Akta Ibukota Persekutuan 1960 kepada pengarah dan juga timbalan pengarah ('Encik Wan') jabatan penilaian Dewan Bandaraya, Kuala Lumpur. Peguam pihak perayu tidak membuat bantahan terhadap permohonan itu tetapi telah memohon untuk mendapat masa lebih daripada enam bulan bagi mengosongkan premis itu. Encik Wan berkata bahawa beliau akan memberi masa enam bulan seperti yang diperuntukkan di bawah s 19(4)(b) Akta itu tetapi jika lebih masa diperlukan, permohonan hendaklah dibuat sebelum masa enam bulan itu tamat. Encik Wan kemudiannya telah memerintahkan supaya penyewa-penyewa

mengosongkan premis itu selewat-lewatnya pada 13 November 1991 dan supaya tuan punya premis itu membayar RM103,567.68 kepada penyewa dan penyewa kecil sebagai pampasan. Kemudiannya perayu telah memfailkan permohonan untuk mendapat perintah certiorari supaya membatalkan perintah Datuk Bandar itu. Hakim Mahkamah Tinggi telah menolak permohonan itu (lihat [1993] 2 MLJ 390) dan perayu telah membuat rayuan.

Diputuskan, menolak rayuan itu:

(1) Di bawah s 4(7) Akta Ibukota Persekutuan 1960, apabila jawatan Datuk Bandar menjadi kosong, Setiausaha Agung Kementerian Wilayah Persekutuan akan secara automatik menjalankan fungsi dan menggunakan kuasa Datuk Bandar. Bagaimanapun, apabila jawatan Datuk Bandar dan juga Setiausaha Agung menjadi kosong, Menteri Wilayah Persekutuan boleh memberikan kuasa secara bertulis kepada sesiapa pegawai awam untuk menjalankan fungsi dan menggunakan kuasa Datuk Bandar. Oleh itu, dalam kes ini, sebarang keputusan Encik Wan dalam penggunaan kuasa yang diwakilkan itu, adalah keputusan Datuk Bandar.

(2) Akta Ibu Kota Persekutuan 1960 tidak memerlukan supaya suratcara perwakilan dari Datuk Bandar dibuat dalam apa-apa bentuk khas dan di dalam kes ini, perwakilan kuasa kepada pengarah dan timbalan pengarah jabatan penilaian itu adalah berkesan, oleh kerana ia dinyatakan dalam perkataan yang jelas.

(3) Sungguhpun s 19(2) Akta itu memperuntukkan bahawa sebarang perintah yang dibuat oleh Datuk Bandar di bawah seksyen itu adalah terakhir dan muktamad dan tidak boleh dipertikaikan di mana-mana mahkamah, ini tidak menghalang mahkamah daripada mendengar permohonan untuk mendapat suatu perintah certiorari.

(4) Di dalam kes ini, Encik Wan mempunyai bidangkuasa untuk memutuskan permohonan itu di bawah s 19 Akta itu, dan apabila memutuskan sedemikian, beliau juga telah mematuhi peruntukan-peruntukan seksyen itu. Beliau juga telah memberi perayu peluang untuk membuat representasi mengapa perintah di bawah s 19 tidak seharusnya dibuat. Nota penyiasatan menunjukkan bahawa perayu sebetulnya tidak membuat bantahan terhadap permohonan itu tetapi telah memohon masa lebih daripada enam bulan untuk mengosongkan premis itu dan beliau telah diberitahu bahawa beliau perlu membuat permohonan berasingan kepada Datuk Bandar. Oleh itu, hakim Mahkamah Tinggi bertindak secara betul apabila beliau menolak permohonan bagi certiorari itu.

Per curiam:

Biasanya, untuk menentukan tujuan undang-undang, mahkamah akan melihat sesuatu kenyataan hanya dari segi nahunya supaya dalam penafsiran suatu statut, mahkamah tidak akan mengendahkan tanda baca atau akan menempatkan semula tanda baca jika perlu, supaya dapat sampai kepada tujuan benar dan makna semulajadi perkataan yang digunakan.]

Notes

For cases on the recovery of possession of premises, see 9 *Mallal's Digest* (4th Ed) paras 1175–1179.

For cases on an application for certiorari, see 1 *Mallal's Digest* (4th Ed) paras 48–160.

Cases referred to

1 *Mohamed Ashraff & Anor v Commissioner for Federal Capital, Kuala Lumpur & Anor* [1972] 2 MLJ 69 (refd)

2 *Tehrani & Anor v Rostron* [1972] 1 QB 182; [1971] 3 All ER 790; [1971] 3 WLR 612 (folld)

Legislation referred to

Control of Rent Act 1966 s 19

Federal Capital Act 1960 s 4(6), (7)

Appeal from: Originating Motion No R1–25–85–91 (High Court, Kuala Lumpur)

Karpal Singh (*Karpal Singh & Co*) for the appellant.

Cyrus Das (*R Abraham* with him) (*Shook Lin & Bok*) for the respondent.

Bhag Singh (*LH Chua* with him) (*LH Chua & Co*) for the intervener.

Eusoff Chin SCJ (delivering the grounds of judgment of the court): Golden Arches Restaurant Sdn Bhd is the owner of premises no 163 Jalan Tuanku Abdul Rahman which is subject to the Control of Rent Act 1966 ('the Act'). The premises is occupied by a chief tenant and six subtenants. The appellant is a sub-tenant.

On 12 February 1991 the owner of the premises submitted an application under s 19 of the Act for recovery of possession of the premises for development purposes.

For the purposes of dealing with applications under s 19 of the Act, the Datuk Bandar Kuala Lumpur had under s 4(6) of the Federal Capital Act 1960 delegated his functions to the director and also the deputy director of the valuation department at Dewan Bandaraya, Kuala Lumpur.

The deputy director, Encik Wan Kat Few, having satisfied himself that the owner's application had complied with the requirements of s 19(1) of the Act, issued notices dated 30 April 1991 to the owner, the chief tenant and subtenants of the premises to be present at the office of the valuation department on 8 May 1991 at 9.30am to discuss a number of matters relating to the owner's application for recovery of possession of the premises. The meeting was, however, adjourned to 14 May 1991 at the request of the appellant's learned counsel Encik Karpal Singh.

On 14 May 1991, Encik Wan Kat Few conducted an enquiry attended by the owner, tenant, subtenants and their solicitors. The notes of enquiry at pp 118–120 of the appeal record shows that on 14 May 1991, Encik Karpal Singh had asked Encik Wan Kat Few to let him peruse the application submitted to the owner which Encik Wan Kat Few allowed. Encik Karpal Singh apparently did not object to the application but asked if Encik Wan

Kat Few could give the appellant time of more than six months to vacate the premises, to which Encik Wan Kat Few said that he would initially give six months as provided under s 19(4)(b) of the Act and if more time was required, it had to be applied for before the expiry of the six months. Encik Wong Kat Few then ordered the tenants to vacate the premises by 13 November 1991 and the owner to pay RM103,567.68 as compensation to the tenants.

The appellant then filed an application for an order of certiorari to quash the Datuk Bandar's order which was made on 14 May 1991. The learned High Court judge dismissed the application for certiorari, and the appellant appealed to the Supreme Court.

A number of issues were raised in arguments before us by Encik Karpal Singh, the learned counsel for the appellant.

Office of the Datuk Bandar of Kuala Lumpur (Commissioner of the city of Kuala Lumpur)

It is not disputed that from the time when the application was made until its disposal by the deputy director of valuation, the office of the Datuk Bandar was vacant. Section 4(7) of the Federal Capital Act 1960 provides as follows:

> Where the Commissioner is prevented from carrying out his functions, exercising his powers, or discharging his duties by sickness, absence or any other cause, or where the office of the Commissioner is for any period vacant, the Secretary General of the Ministry of the Federal Territory, or such other public officer as may be authorised in writing by the Minister shall carry out the functions, exercise the powers and discharge the duties of the Commissioner.

Encik Karpal Singh stated that at the relevant period, there was in existence a Secretary General of the Ministry of the Federal Territory. He was of the view that s 4(7) of the Federal Capital Act 1960 requires that the Secretary General or other public officer must be authorized by the Minister to carry out the functions, exercise the powers and discharge the duties of the Datuk Bandar. He submitted that there is no evidence that the Minister had authorized the Secretary General under s 4(7) of the Federal Capital Act 1960, and because of that, the Secretary General could not carry out the functions, or exercise the powers and discharge the duties of the Datuk Bandar. Consequently, the Secretary General's purported delegation of powers to the deputy director of valuation under s 4(6) of the Federal Capital Act 1960 was void and of no effect.

We hesitate to agree with the views expressed by Encik Karpal Singh. We note that a punctuation mark, namely a comma is inserted by Parliament after the words 'the Secretary General of the Ministry of the Federal Territory,' in s 4(7) of the Federal Capital Act 1960.

Normally, to determine the intent of the law the court would look at a sentence from a purely grammatical point of view so that in construing a statute, the court will disregard a punctuation or will re-punctuate it if that be necessary, in order to arrive at the true purpose and natural meaning of the words employed.

A We find that Parliament had deliberately inserted a comma after the words 'Federal Territory' and the significance cannot be ignored because without the comma, the words 'Secretary General' and 'public officer' must be read conjunctively, but with the comma, these words must be read disjunctively.

B We are of the view that under s 4(7) of the Federal Capital Act 1960, whenever the office of the Datuk Bandar is vacant, the Secretary General of the Ministry of the Federal Territory shall automatically carry out the functions and exercise the powers of the Datuk Bandar. Where, however, the office of the Datuk Bandar and that of the Secretary General are vacant, the Minister of the Federal Territory may authorize in writing any public C officer to carry out the functions and exercise the powers of the Datuk Bandar.

Power to delegate

Section 4(6) of the Federal Capital Act 1960 states:

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> Where by or under this Act or any other written law the Commissioner is empowered to exercise any powers or perform any duties he may by instrument in writing delegate, subject to such conditions and restrictions as may be prescribed in such instrument, the exercise of such powers or the performance of such duties to any person described by name or office:
>
> Provided that nothing in this section shall apply to any power to make any E subsidiary legislation conferred upon him by or under this Act or any other written law.

The appellant's learned counsel submitted that the delegation of powers by the Datuk Bandar to the deputy director of valuation was defective in wording, and therefore invalid. Further, it was issued by the Director F General of the Ministry of the Federal Territory, and not by the Datuk Bandar. This is how the delegation was worded:

> Perwakilan kuasa
>
> Saya Elyas Omar Ketua Setiausaha Kementerian Wilayah Persekutuan yang mnejalankan tugas-tugas Datuk Bandar Kuala Lumpur mengikut s 4(7) Akta G Ibu Kota Persekutuan 1960, dan menurut kuasa-kuasa yang telah diberikan kepada saya dibawah s 4(6) Akta Ibu Kota Persekutuan 1960 saya dengan ini memberi kuasa kepada pengarah dan timbalan pengarah penilaian dan pengurusan harta untuk menjalankan tugas-tugas di bawah s 18A Akta Kawalan Sewa 1966.
>
> Bertarikh: ... (tak terang)
>
> H tt
> Elyas bin Omar
> Ketua Setiausaha
> Kementerian Wilayah Persekutuan

I Translation:

> Delegation of powers
>
> I Elyas Omar Secretary General of the Ministry of the Federal Territory in carrying out the functions of the commissioner of the city of Kuala Lumpur as

provided under s 4(7) of the Federal Capital Act 1960, and in exercising the powers given to me under s 4(6) of the Federal Capital Act 1960 hereby delegate my powers to the director and the deputy director of valuation and management of properties to perform all the functions under s 18A of the Control of Rent Act 1966.

Dated: ... (illegible)

—Sgd—
Elyas bin Omar
Secretary General
Ministry of the Federal Territory

We note that s 18A of the Act was subsequently renumbered by Parliament to read as s 19 of the Act.

We find that the Federal Capital Act 1960 does not require that the instrument of delegation must be in any special form. It is therefore sufficient if words used in the instrument of delegation are expressed in clear language to show that the Datuk Bandar, by that instrument intended to delegate his functions to the director and deputy director of the valuation department. These are experienced and competent officers whom the Datuk Bandar trust to execute the delegated functions effectively. The act of delegating his functions exercised by the Datuk Bandar is purely an administrative act and not a legislative one. By that delegation, the Datuk Bandar had put someone in his place to do what he is authorized to do by s 19 of the Act. Consequently, any decision of Encik Wan Kat Few in the exercise of the delegated power was the decision of the Datuk Bandar.

Whether the Datuk Bandar's order is subject to review by the court

In *Mohamed Ashraff & Anor v Commissioner for Federal Capital, Kuala Lumpur & Anor*,[1] the Federal Court decided that the order made by the Datuk Bandar under s 18A (now s 19 of the Act) was not subject to review by the court because sub-s (12) states:

Any order made by the Commissioner under this section shall be final and conclusive and shall not be questioned in any court.

Later decisions of the courts with which we agree show that such ouster provision in an Act of Parliament does not preclude the court from entertaining an application for an order of certiorari. Whether grounds for an order can be established and whether the application for certiorari can succeed, are matters which can be decided at the hearing of the substantive motion itself. In *Tehrani & Anor v Rostron*,[2] at pp 187–188 Lord Denning MR said in his judgment:

The modern cases establish this principle: when Parliament says that a decision of an inferior tribunal is to be 'final', it does so on the assumption that the tribunal will observe the law. Parliament only gives the impress of 'finality' to the decision on the condition that it is reached in accordance with law: and the Queen's courts will see to it that this condition is fulfilled. Accordingly if a tribunal goes wrong in law and the error appears on the face of the record, the High Court will interfere by certiorari to quash the decision. It is not to be

A deterred by the enactment that the decision is 'final'. The decision may be final on the facts, but it is not final on the law. This was settled by *R v Medical Appeal Tribunal, ex p Gilmore* [1957] 1 QB 574, where all the cases are collected. Likewise if a board or a Minister is entrusted with a decision affecting private rights, then even though it is said to be 'final', the High Court *can ensure that it is correct in point of law.* (Emphasis added.)

B We are of the view that when this application for certiorari is made to the court, the learned judge has to determine whether the order made by the Datuk Bandar is indeed final. It is final if: (i) the person making the order has the jurisdiction to make it; (ii) he has complied with the provisions of the law which he is required to comply; and (iii) where his order is likely to C impose any liability on, or affect the right of any person, that person has been given an opportunity to be heard. We find that Encik Wan Kat Few acting for the Datuk Bandar had the jurisdiction to determine the application under s 19 of the Act, and in doing so, he had also complied with the provision of that section. He had given the appellant the opportunity to make representations as to why the order under s 19 should not be made. D The notes of inquiry by Encik Wan Kat Few show that the appellant was not in fact objecting to the application but only requested for a time longer than six months to vacate the premises to which request he was told to make a separate application to the Datuk Bandar.

The learned High Court judge had dismissed the appellant's application E for an order of certiorari to quash the order of the Datuk Bandar. [See [1993] 2 MLJ 390.] For the reasons given, we find that this appeal must be dismissed with costs.

Appeal dismissed.

F Reported by Prof Ahmad Ibrahim

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